

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
The Hon. Janet Neff, Michael Smolinski, and Brian Zahra, Presiding

VIRGINIA JOLIET,
Plaintiff-Appellee

Supreme Court No. 127175

Ct. of Appeals Docket 247590

vs

Lower Court No. 01-140733-CZ

GREGORY PITONIAK,
Individually and as Mayor of
the City of Taylor, **FRANK BACHA,**
Defendants-Appellants

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PLAINTIFF-APPELLEE'S NOTICE OF APPEARANCE

APPEARANCE

APPELLEE'S BRIEF PURSUANT TO ORDER OF MAY 27, 2005

PROOF OF SERVICE

June 22, 2005

FILED
JUN 23 2005
CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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PLAINTIFF-APPELLEE'S NOTICE OF APPEARANCE

TO: Janet Callahan Barnes
Attorney for Defendants-Appellants

Take Notice that the undersigned has entered his Appearance
as attorney for Plaintiff-Appellee in this action.



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June 22, 2005

APPEARANCE

TO: Clerk of the Court
Michigan Supreme Court
2nd Floor Law Building
Lansing, MI 48933

Please enter my Appearance as Attorney for Plaintiff-Appellee.



E. Philip Adamaszek P10030
Attorney for Plaintiff-Appellee

June 22, 2005

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**BRIEF OF PLAINTIFF-APPELLEE PURSUANT
THIS COURT'S ORDER OF MAY 27, 2005**

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STATEMENT OF FACTS

Defendants-Appellants filed an Application for Leave to Appeal to this Court. They appealed denial of their motion for summary disposition by the trial court and the Court of Appeals decision which upheld the trial court. They seek dismissal of Plaintiff-Appellee's based on the running of the statute of limitations. They have not filed any motion **in limine** with the trial court which might limit the scope of Plaintiff-Appellee's claim and damages to those occurring within the statutory period.

This Court has ordered the parties to submit briefs addressing: (1) what actions, if any, were taken by Defendants after October 8, 1998 that contributed to a discriminatory hostile work environment, so as to support a December 1, 1998 date of injury; (2) whether a December 1, 1998 accrual date is sustainable for Defendant Frank Bacha, where he left his employment with the City of Taylor on October 8, 1998; and (3) the impact, if any, of this Court's decision in **Magee v Daimler-Chrysler Corp.**, 472 Mich 108 (2005).

Plaintiff-Appellee will refer to those exhibits attached to Defendants-Appellants Application for Leave to Appeal A through H.

In 1998 Plaintiff was a self-supporting widow who had to assist her daughter who was in a private college at that time. She had worked for the City of Taylor since 1990. She was eventually promoted to Manager of Data Processing by Mayor Priebe and initially retained in that position by Defendant Mayor Pitoniak who changed her title to Manager of Information Systems. but did not

initially change her duties. (Exhibit G Plaintiff's Affidavit).

Mayor Pitoniak hired his long time political ally, Defendant Frank Bacha to head the Water Department. His sexist and age related comments began in 1997 and throughout 1998. Plaintiff was falsely accused of responsibility for a Water Dept. billing error by both Defendants in December of 1997. A young male, Randy Wittner, in his 30s with no experience with the City of Taylors software operations was hired as the new Director of her Department on August 30th, 1998. She was forced to write out the job description for her own job and to interview for it.

While appearing before city council with Ms. Joliet to obtain budget approval for the new director, Mayor Pitoniak stated that the new director was to complement her skills rather than replace her. After that director was hired on August 30th, 1998, her hours were cut and her authority disappeared but she was still expected to provide those services which were beyond his knowledge and experience for less pay.

She repeatedly requested an "at will termination" which the Mayor could exercise each year pursuant to the labor agreement which governed Taylor Management and Administrative employees. That would have allowed her 30 weeks of severance pay while she searched for a new job. The Mayor refused to discuss that. Defendant Mayor repeatedly ignored her requests for a meeting to discuss her status and future with Taylor as well an equitable pay structure.

As her Affidavit sets forth, she was felt the humiliation

of her de facto demotion, reduced hours and income at the same time she was expected to assist her replacement and continue to perform those tasks which were beyond his knowledge and experience. Her replacement was also directed to spy on her. (Exhibit G Para 18).

After an investigation of Mr. Bacha's conduct towards female employees which involved favors for sex, he was placed on paid leave in September of 1998. He was also allowed an **at will** termination to be effective October 8, 1998 so that he would become entitled to substantial severance pay upon his termination.

After Mr. Bacha's departure on October 8, 1998, the new director was asked on 2 occasions to specify her duties. Although Dept. heads were directly responsible to the Mayor, Mr. Wittner stated that he had no idea what her duties were. She continued her attempts to meet with the Mayor to no avail. Yet that Mayor met with her department's secretary who was told that her job was safe. This was after October 8th as well. Ms. Joliet received no such assurance although she was the only other member of that department. After the October 8th, the new director admitted to thathe was directed to spy on Ms. Joliet. A termination for cause would eliminate her elibibility for severance pay and pension. Again, after October 8th, acting on behalf of the Mayor, the new director refused Ms. Joliet's request for training on the new computer system indicating that he would handle it. Finally, the Mayor again ignored her final request for severance pay which she stated in her letter of resignation.

On November 24, 1998, Plaintiff-Appellee began vacation time

from her duties at her city office in Taylor, Michigan. While she was not **at work in her office in Taylor, she did not cease to perform a significant part of her "routine" duties each morning via the internet.** Doing so ensured that the city computer system would not become non-operational. (Exhibit G Paras 1-8).

On November 30th, 1998, Ms. Joliet decided to end the uncertainty and her humiliation. She sent in her involuntary resignation to be effective December 1, 1998. She again requested that she receive the same severance pay treatment afforded to Defendant Bacha. Again that request was ignored. Although her letter stated her reasons for resigning, Defendant Mayor made no response to that letter. Her final pay check received after she filed her action, reflected her reduced hours.

Plaintiff-Appellee filed her action on November 30th, 1998. She alleged that Mayor Pitoniak and Frank Bacha, former Executive Director of the Dept. of Public Works acting as agents of the City of Taylor conspired to reduce her pay, duties, etc. and replace her as head of her department with a younger and male employee. She alleged sex discrimination, hostile environment, age discrimination, misrepresentation in violation of her labor management agreement with the City of Taylor, all leading to her involuntary retirement and constructive discharge.

ARGUMENTS

- I. After October 8, 1998, defendants continued to sustain the hostile work environment which they created so as to force Plaintiff into and involuntary resignation effective December 1, 1998.

Even after Mr. Bacha left Taylor on October 8, 1998, Plaintiff

remained isolated and the Mayor continued to duck all of her attempts to see him. The disparate pay structure between Plaintiff and the new young male director, Randy Wittner, remained in place through each of the pay periods on through the end of November for which she was paid in December. The new director admitted late in October that he was directed to spy on her. A termination by the Mayor for cause would deny her both a pension and severance pay.

After October 8th, 1998, and as a department head who was responsible directly to the Mayor, Mr. Wittner was asked twice to specify her duties . He told her that he had no idea what they were. Her department consisted of the new director, Plaintiff and a secretary. That secretary was called in to see the Mayor who assured **her** that her job was safe. When Plaintiff asked for training in the new software that was going to be installed, it was refused. The new director told her that he would handle it. This all added to her uncertainty and concern that she would be terminated as soon as the new man became sufficiently experienced with the city operation systems. She of course, was to provide her expertise with that system and address those problems with which he had no experience for less pay than he received. The Mayor did not have to speak to her to effect her hostile environment but he directed and was responsible for its' creation and sustenance.

II. Can a December 1, 1998 accrual date for injury to Plaintiff be sustained against Frank Bacha, when he left his employment with the City of Taylor on October 8, 1998?

Defendant Bacha did not speak to Plaintiff after October 8, 1998. She alleges that Mr. Bacha had convinced the Mayor that her

sex and age disqualified her from heading her department before he left. Defendant Mayor acting in concert with Mr. Bachan took steps to replace, to demote and to isolate her. The Mayor's actions which continued after Mr. Bacha's departure, merely implemented the program of discrimination which Mr. Bacha had initiated. Both had acted in concert prior to Mr. Bacha's departure and the Mayor's actions thereafter should be attributed to Mr. Bacha as well. The Mayor continued the disparity in pay between Plaintiff and the new young male director. The Mayor denied Plaintiff the severance pay which she had requested in her letter of resignation although he afforded severance pay to Mr. Bacha.

As in criminal proceedings, the civil conspiracy between Mayor Pitoniak and Frank Bacha against Ms. Joliet need not necessitate proof that each conspirator participated in every phase of their venture provided that eachs consented to and contributed to it.

U.S. v Hughes, 889 F 2d 1135 C.A. 6 (Mich) 1990.

III This Court's decision in Magee v DaimlerChrysler Corp, 472 Mich 108 (2005) does not support a bar to Plaintiff's action.

The facts in **Magee** parallel the other last day at work cases, cited by Defendants-Appellants. Magee went on **medical leave** and **without returning to work**, resigned on February 2, 1999. She filed hersuit on February 1, 2002. In **Magee** as in those cases where the employee was walked off the job never to return, **Magee** did not continue performance of her work functions. Plaintiff's Affidavit which she filed in the trial court, remains uncontorverted. That affidavit sets forth the **routine functions** which she performed while **on vacation**. In short, unlike Magee, Plaintiff continued to

work on a daily basis for Taylor. She was not merely **on call** but actually ran checks each morning even after Thanksgiving, to ensure that the city computer back-up programs did not render the city computers non-operational. (Exhibit G Paras 1-8).


Inspite of her ongoing work performance for the city while on vacation, she continued to suffer disparate pay during that period, isolation from the Mayor, and finally denial of her request for severance pay treatment, comparable to that given Mr. Bacha. (Exhibit G Para 10). These uncontroverted facts distinguish this case from Magee.

In its' opinion supporting the trial court, the Court of Appeals cited Plaintiff's affidavit and her performance of work for Taylor up to and including November 30th, 1998. (Exhibit A page 2). They distinguished this case from those cases cited by Defendants.

Plaintiff's facts are even stronger than those in **Collins v Comerica Bank**, 468 Mich 628,664 NW 2d 713 (2003). In **Collins**, the employee was suspended and told to be available during normal working hours while an investigation into her conduct was completed. Her termination date was deemed to be her discharge date. Ms. Joliet was not merely available, she actively worked for Taylor throughout her vacation.

RELIEF REQUESTED

Plaintiff-Appellee's action is not time barred and she requests this Court to remand this case to the Wayne County Circuit Court for trial and to grant her such other relief as may be fair and equitable.


E. Philip Adamaszek
Attorney for Plaintiff-Appellee

June 22, 2005